

FILED

MAR 29 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SHERON GEORGE; SHARRICCI
FOURTE-DANCY,

Plaintiffs - Appellees,

v.

BAY AREA RAPID TRANSIT
DISTRICT,

Defendant - Appellant.

No. 04-15782

D.C. No. CV-00-02206-CW/WDB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Claudia Wilken, District Judge, Presiding

Argued and Submitted February 13, 2006
San Francisco, California

Before: HUG, ALARCON, and McKEOWN, Circuit Judges.

This appeal asks us to decide whether certain Department of Transportation (DOT) regulations are arbitrary and capricious, specifically 49 C.F.R. § 37.9.

Because the DOT has a strong interest in the continuing validity of its regulations,

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

the interests of the United States should be represented as a party in this case. See McCowen v. Jamieson, 724 F.2d 1421, 1423-24 (9th Cir. 1984) (recognizing that joinder issues may be brought up *sua sponte* and stating that rendering a decision regarding the validity of agency regulations “without the Secretary’s being a party to the action would be to ‘deprive it of the right to defend the integrity of its administrative decisions in these areas which so intimately affect its policies and procedures.’ We believe that the interests here involved are sufficiently important to justify the Secretary’s joinder if feasible.”) (citations omitted); see also Jacobsen v. Bonine, 123 F.3d 1272, 1274-75 (9th Cir. 1997) (refusing to address the merits of a claim challenging the administration of an agency program because that agency was not a party to the litigation).

The United States appeared as an *amicus curiae* on appeal and indicated at oral argument that it was not notified that the regulations were being challenged and that it wants an opportunity to defend the DOT regulations. We therefore vacate the district court’s grant of summary judgment in favor of the Plaintiffs-Appellees and remand for the United States to be joined as a party in connection with the district court’s consideration of the validity of the DOT regulations. We express no opinion as to the validity of the challenged DOT regulations.

Vacated and Remanded; each party to bear its own costs on appeal.